IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

APPEAL FROM ORDER NO. 598 OF 2007

WITH

CIVIL APPLICATION NO. 849 OF 2007

Shri Pandurang D. Shetke ... Appellant
(Orig. Plaintiff)

Versus

The Municipal Corporation of the
City of Mumbai & Ors. ... Respondents
(Orig. Defendants)

Mr. G.S.Godboke, Advocate, i/b. Mr. Rajesh S. Datar, Advocate for the appellant.
Ms. Geeta Joglekar, Advocate for B.M.C.

CORAM: J.H.BHATIA,J.

DATE: 5th December,2007.

P.C.

1. Heard learned Counsel for the parties.

2. The learned Counsel for the appellant contends that the property in dispute being declared as slum area in view of the gazetted notification, the Municipal Corporation does not have power to give direction for demolition. Such power can be exercised only by the Competent Authority under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1975. The trial Court did not consider this aspect because the gazetted notificatioon was not produced to show that it was declared as slum area. The gazetted notification has been produced before this Court after obtainig permission from the Court. Hence, the documents which may have legal implications, are not considred by the trial Court.

3. Learned Counsel for both the parties submit that the matter may be remanded back to the trial Court for reconsideration of the Notice of Motion. Mr. Godbole, learned Counsel for the appellant/plaintiff, on getting instructions from the Secretary of the plaintiff, who is present before the Court, makes a statement that the plaintiff-school will not make use of the third floor of the building which is in dispute. The learned Counsel for both the parties agree that the plaintiff and the Municipal Corporation may jointly put seal on the third floor of the building to prevent it being used by the school, pending the Notice of Motion.

4. In view of the above circumstances, the following order is passed :-

(i) The impugned order rejecting the Notice of Motion is hereby set aside. The Notice of Motion is remanded back to the trial Court, to hear the parties afresh and decide the same after taking into consideration the notification issued under the Slum Act and implication of Section 47 of the Slum Act.

(ii) The Chairman and the Secretary of the plaintiff shall file an undertaking before this Court within two days to the effect that the third floor of the building, which is in dispute, shall not be used for any purpose pending the decision of the Notice of Motion by the trial Court.

(iii)The plaintiff and the respondents Municipal Corporation shall jointly put their seal to the third floor of the building to prevent it from being utilised till further orders.

(iv) Till the decision of the Notice of Motion, the Municipal Corporation shall not act upon the

notice issued under Section 354A of the B.M.C.Act.

Appeal stands disposed of.

5. As the Appeal itself is disposed of, the Civil Application No.849 of 2007 does not survive and stands disposed of.

(J.H.BHATIA,J.)